STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

La Vanda Wheeler,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2019–CB–0019–C
	)	
Local Education Association of Dist. 300,	)	
IEA-NEA,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On June 7, 2019, La Vanda Wheeler (Wheeler) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that Local Education Association of District 300, IEA-NEA (Union) committed unfair labor practices within the meaning of Section 14(b) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 (2019). Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge. This matter is now before us on Wheeler's exceptions to the EDRDO. For the reasons discussed below, we affirm the EDRDO dismissing the unfair labor practice charge.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein.

III. Discussion

Wheeler asserts in her exceptions that the Union violated the Act when it failed to provide her with legal representation or reimburse her for attorney's fees in litigation

against her former employer, Community Unit School District 300 (District). She cites *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (l975), in support of her argument. In *Weingarten*, the United States Supreme Court held that an employee's request that a union representative be present at an investigatory interview that the employee reasonably believes may result in discipline is protected concerted activity and the discipline or discharge of an employee for refusal to cooperate in such an interview without union representation is a violation of Section 8(a)(1) of the National Labor Relations Act (NLRA), 29 U.S.C. §158(a)(1).[1] We extended *Weingarten* rights to educational employees under Section 14(a)(1) of the IELRA in *Summit Hill School Dist. 161*, 4 PERI 1009, Case No. 86-CA-0090-C (IELRB Opinion and Order, December 1, 1987). *Weingarten* applies to conduct by an employer under Section 14(a)(1) of the IELRA, not to a union's duty of fair representation under Section 14(b)(1). A union's duty of fair representation under 14(b)(1) does not obligate it to provide an employee with legal counsel or reimburse her attorney's fees when she elects to pursue a grievance, file an unfair labor practice charge, or initiate a lawsuit against an employer. *Norman Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995) (Union has no obligation to provide employee with counsel in his federal civil rights suit); *Chicago Teachers Union (Day)*, 10 PERI 1008, Case No. 93-CB-0028-C (IELRB Opinion and Order, November 10, 1993) (Union had no obligation under the collective

[1] Section 8(a)(1) of the NLRA provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in the NLRA. It is very similar to Section 14(a)(1) of the Act which provides that it shall be an unfair labor practice for an employer or its agent to interfere with, restrain or coerce educational employees in the exercise of the rights guaranteed therein. The IELRA was modeled after the NLRA and federal interpretation of the NLRA is persuasive authority in construing the IELRA. *East Richland Educational Assn IEA–NEA v. Illinois Educational Labor Relations Bd.*, 173 Ill. App. 3d 878, 902, 528 N.E.2d 751 (4th Dist. 1988).

bargaining agreement to assist employee in appeal of discharge); *Public Employees Union, Local #1*, 27 PERC 98 (Cal. PERB 2003) (Union's failure to carry out its promises to reimburse an individual for his attorney's fees did not demonstrate a breach of the duty of fair representation). A union must be allowed to exercise some degree of discretion in deciding how far to pursue members' complaints, based on criteria such as the perceived merit of the complaint, the likelihood of success in action based thereon, the cost of prosecuting such an action, or the possible benefit to the union membership as a whole. *Jones*, 272 Ill. App. 3d 612, 650 N.E.2d 1092. Wheeler's charge in this matter is against the Union, not the District. Her right to request a union representative during an investigatory interview does not create an obligation for the Union to provide her with an attorney to pursue subsequent litigation against the District.

Wheeler's next exception is to the Executive Director's finding that she failed to adduce any evidence that the Union violated Section 14(b)(5) of the Act. Section 14(b)(5) prohibits unions from "[r]efusing to reduce a collective bargaining agreement to writing and signing such agreement." Individual employees lack standing to bring an action regarding the mutual obligations of employers and unions to bargain in good faith. *Teamsters, Local 726*, 13 PERI 1112, Case No. 96-CB-0016-C (IELRB Opinion and Order, August 25, 1997). Even if Wheeler presented facts relating to a violation of Section 14(b)(5), she lacks standing to pursue such a claim.

Furthermore, Wheeler's charge is barred by the doctrine of res judicata because it is based upon the same facts that she alleged in the charge she previously filed against the Union in Case No. 2015-CB-0015-C, which the Executive Director dismissed and we issued a final order in *Local Education Association of Dist. 300, IEA-NEA*, 33 PERI 66, Case No. 2015-CB-0015-C (September 17, 2015).

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charge is dismissed in its entirety.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **April 16, 2020**
Issued: **July 31, 2020**

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert F. O'Brien
Gilbert F. O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara D. Shayne
Lara D. Shayne, Member

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On June 7, 2019, Charging Party, La Vanda Wheeler filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB) in the above-captioned case, alleging that Respondent, Local Education Association of District 300, IEA-NEA, violated Section 14(b) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* (2012), *as amended.*[1] After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

II. INVESTIGATORY FACTS

A. Jurisdictional Facts

At all times material, the Community Unit School District 300 (District) was an educational employer within the meaning of Section 2(a) of the Act. As relevant, until the effective date of Charging Party's resignation, La Vanda Wheeler (Wheeler) was an educational employee within the meaning of Section 2(b) of the Act, employed by the District in the job title or classification of Social Worker. At all times material, the Local Education Association of District 300, IEA-NEA (Union) was a labor organization within the meaning of Section 2(c) of the Act. At all times material, the Union was the exclusive representative of a bargaining unit comprised of certain of the District's employees, including the job title or classification of Social Worker. As relevant, the Union and District were parties to a collective bargaining agreement (CBA) for the unit, which provides for a grievance procedure culminating in arbitration.

B. Facts Relevant to the unfair labor practice charge

[1] Charging Party alleges in her charge that the Respondent engaged in unfair labor practices within the meaning of Section 14(b)(1), (5), and what appears to be 9(b)(1) of the Act. In the absence of the existence of a Section 9(b)(1) of the Act, Charging Party's claim will be analyzed in accordance with the former two alleged subsections of the Act.

In January 2013, Wheeler and the District entered into an agreement under which Wheeler tendered her voluntary resignation from employment with the District, effective June 30, 2014.

In her charge, Wheeler alleges that in October 2013, Kolleen Hanetho (Hanetho), Union President, neglected to inform her that the Union was affiliated with an attorney or legal representation. As a result, Wheeler states that Hanetho advised her that she would be reimbursed in the amount of one-thousand dollars ($1,000.00) towards a retainer fee for the services of a private attorney Wheeler hired to defend her against the District.[2]

In June 2014, Wheeler asserts that Steve Wilquet (Wilquet), UniServ Director for the Illinois Education Association, notified her that the Union does not reimburse fees. Wheeler asserts further that she met with Michal Wilson (Wilson), Union President, and Carl Frazier (Frazier), the Union's Unit President, and was apprised that they would contact the Union's attorney for direction on how to proceed regarding Wheeler's concerns. Subsequently, during the same month, Wheeler contends that she received notification from Frazier that the Union's attorney stated that she was no longer an employee and the Union would not represent her.

III. THE PARTIES' POSITIONS

Wheeler sets forth that she signed the January 2013 resignation agreement under duress. In connection thereof, she argues that the Union's failure to represent her has resulted in the resignation agreement that she executed being considered valid, which has resulted in an ongoing interference of her rights, as well as economic duress. Wheeler also argues, in no specific terms other than the Union denied her representation, that the Union violated her Weingarten rights.

The Union argues that Wheeler's allegations have been previously disposed of by the Board, and therefore are barred by the doctrine of res judicata.[3]

IV. DISCUSSION AND ANALYSIS

Section 14(b)(1) of the Act provides that employee organizations, and their agents or representatives are prohibited from restraining or coercing employees in the exercise of the rights guaranteed under the Act, provided that a labor organization or its agents shall commit an unfair labor practice under this part in duty of fair representation cases only by intentional misconduct in representing employees under the Act. 115 ILCS 5/14.

As a preliminary matter, the doctrine of res judicata has applicability to the instant case. Res judicata, also referred to as claim preclusion, applies to questions that were litigated in an earlier proceeding, and extends to those questions that could have been raised or determined in

[2] According to the evidence submitted in this charge, Hanetho was the Union President in or around August 2011, and was later succeeded.

[3] The Union did not specifically address Wheeler's Section 14(b)(5) claim, or Weingarten cause of action in its position statement or supplemental filings with the Board Agent.

the earlier proceeding. *City Colleges of Chicago*, 17 PERI 1088, Case No. 2001-CA-0012-C (IELRB Opinion and Order, September 25, 2001). Claim preclusion also prohibits a party from subsequently splitting a single cause of action in an earlier proceeding into more than one proceeding. *Id.*

Here, Wheeler is, *inter alia*, attempting to relitigate a Section 14(b)(1) claim that was decided by the Executive Director in a previous Recommended Decision and Order, as well as by this Board in an Opinion and Order. Wheeler's 14(b)(1) claim concerns whether the Union breached its duty of fair representation against her in violation of the Act. *See* 115 ILCS 5/14. Case No. 2015-CB-0015-C addressed the same allegations, facts and questions, where the Board found a portion of Wheeler's charge to be untimely and dismissed the remaining portions of her charge because she failed to raise an issue of law or fact to warrant a hearing.[4] Consequently, Wheeler is barred by claim preclusion from relitigating the allegations pertaining to the Union's representation relevant to Wheeler's resignation agreement, or alleged lack thereof, before this Board. *See id.*

Section 14(b)(5) of the Act prohibits employee organizations, their agents or representatives or educational employees from refusing to reduce a collective bargaining agreement to writing and signing such agreement. 115 ILCS 5/14. The IELRB has long held that in order for a complaint to be issued, the investigation must disclose adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing could constitute sufficient evidence to support a finding of a violation of the Act. *Lake Zurich School District No. 95*, 1 PERI 1031, Case No. 84-CA-0003 (IELRB Memorandum Opinion and Order, November 30, 1984). Wheeler did not submit, and the investigation did not adduce any evidence supporting Wheeler's assertion related to Section 14(b)(5). Wheeler has failed to provide evidence sufficient to establish an unrebutted *prima facie* case that the Union violated Section 14(b)(5) of the Act. *See id.*

Lastly, in terms of Wheeler's Weingarten claim, an employee has a right to union representation when the following three circumstances exist: 1) the meeting between an employee and his/her supervisor is investigatory; 2) the employee reasonably believes that disciplinary action may result; and 3) the employee requests union representation. *Summit Hill School District 161*, 4 PERI 1009, Case No. 86-CA-0090-C (IELRB Opinion and Order, December 1, 1987). As referenced above, for a complaint to issue, an investigation must disclose adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing could constitute sufficient evidence to support a finding of a violation of the Act. *Lake Zurich*

[4] On June 16, 2015, the Executive Director issued a dismissal of Wheeler's allegations that the Union violated Section 14(b) of the Act. On September 17, 2015, the Board issued its final order in an Opinion and Order.

School District No. 95, 1 PERI 1031, Case No. 84-CA-0003 (IELRB Memorandum Opinion and Order, November 30, 1984). Here, Wheeler did not submit, and the investigation did not adduce any evidence that a Weingarten right or scenario existed in the instant case. Wheeler has failed to provide evidence sufficient to establish an unrebutted *prima facie* case that a Weingarten violation occurred in contravention of the Act. *See id.*

V. ORDER

For these reasons, the instant charge is hereby dismissed in its entirety.

VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 28th day of October 2019.

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EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
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